

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Petition of Northland Networks, Ltd. for
Expedited Preemption

WC Docket No. 03-242

COMMENTS OF VERIZON

Verizon New York Inc. (“Verizon”) does not oppose Northland Networks, Ltd.’s (“Northland”) request that the Commission preempt the New York Public Service Commission’s (“PSC”) jurisdiction and decide a dispute about the proper interpretation of Northland’s interconnection agreement with Verizon. As Northland describes in its petition, the parties’ dispute involves the applicability, in light of the terms of the parties’ interconnection agreement, of the interim intercarrier compensation regime adopted in the *ISP Remand Order*¹ to ISP-bound traffic delivered to Northland from June 14, 2001 to the present. On August 7, 2002, the New York PSC made clear that it would not act to resolve that dispute.²

Although Verizon agrees that preemption is appropriate in light of the New York PSC’s failure to act — indeed, Verizon jointly sought preemption of the New York PSC’s jurisdiction

¹ Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) (“*ISP Remand Order*”) (subsequent history omitted).

² See Letter from Janet Hand Deixler, Secretary, State of New York Department of Public Service, to Gayton P. Gomez, Verizon New York Inc. (Aug. 7, 2002) (Affidavit of Keith J. Roland Exh. 6).

in identical cases³ — Verizon opposes Northland’s request that the Commission expedite its ruling on this petition. Unlike other competitors, which filed petitions for preemption jointly with Verizon in March 2003, Northland waited more than 15 months after the New York PSC stated that it would not adjudicate this dispute before seeking preemption. Northland’s own lengthy delay demonstrates that there is no urgency requiring the Commission to expedite this petition. *See* 47 U.S.C. § 252(e)(5).

With respect to the issues to be resolved by the Commission, Verizon agrees that Issues 1 through 3 listed in Northland’s petition are appropriate for resolution by the Commission.

Northland has also proposed an Issue 4:

- (4) Since the parties have not executed an amendment to their interconnection agreement, and since Verizon has not pursued its effort to require Northland to execute such an amendment, has Northland been entitled to receive the reciprocal compensation rate set forth in Verizon’s PSC 914 Tariff (which is incorporated by reference into the interconnection agreement)?

Northland Pet. at 9. For the following reasons, Verizon opposes the inclusion of Issue 4 as a separate issue to be resolved.

First, the Commission’s determinations with respect to Issues 1 through 3 necessarily will obviate Issue 4. For example, if in resolving Issue 1 the Commission holds — as it should — that, under the terms of the interconnection agreement, the parties became subject to the intercarrier compensation regime adopted in the *ISP Remand Order* as of June 14, 2001, then it is irrelevant whether the parties amended that agreement. Similarly, if in resolving Issues 2 and 3 the Commission holds that the parties’ agreement obligated them to execute an amendment

³ *See* Memorandum Opinion and Order, *Joint Petition of MCI WorldCom Communications, Inc., Brooks Fiber Communications of New York, Inc. and Verizon New York, Inc. for Preemption of the Jurisdiction of the New York Public Service Commission Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended*, 18 FCC Rcd 9473 (2003).

implementing the interim compensation regime, the Commission will also determine the date on which that amendment should be deemed to take effect. The Commission's resolution of that latter question will eliminate any need to consider, as a separate issue, the relevance of Verizon's supposed failure to pursue efforts to have Northland sign such an amendment.

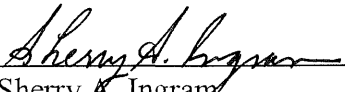
Second, unlike Issues 1 through 3, which contain neutral language that was the product of negotiation between Verizon and competing carriers and are already at issue in similar proceedings, Issue 4 is drafted in argumentative terms designed to favor the petitioner. In addition, it assumes the existence of facts that it will be Northland's burden to prove — for example, that “Verizon has not pursued its effort to require Northland to execute . . . an amendment” to the parties' agreement. Northland Pet. at 9. In any event, because even a neutrally drafted Issue 4 would, as explained above, be subsumed in Issues 1 through 3, Issue 4 should be eliminated.

CONCLUSION

For the foregoing reasons, the Commission should grant the petition for preemption, limited to Issues 1 through 3 raised in that petition, and should not expedite its consideration of the petition.

Respectfully submitted,

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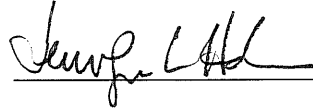
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December 12, 2003

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of December, 2003, copies of the foregoing
“Comments of Verizon” were sent by first class mail, postage prepaid, to the parties listed below.

A handwritten signature in dark ink, appearing to read "Jennifer L. Hoh", is written over a horizontal line.

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